

## Brigham Young University Law School BYU Law Digital Commons

---

### Utah Court of Appeals Briefs

---

1992

# Charles W. Webb v. Fred Van Der Veur, Warden, Central Utah Correctional Facility : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

R. Paul Van Dam; Attorney General; David Thompson; Assistant Attorney General; Attorneys for Appellee.

Charles W. Webb; Pro Se.

---

### Recommended Citation

Brief of Appellee, *Webb v. Van Der Veur*, No. 920436 (Utah Court of Appeals, 1992).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/3394](https://digitalcommons.law.byu.edu/byu_ca1/3394)

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

TAH  
DOCUMENT  
FU

10  
DOCKET NO. 920436 IN THE UTAH COURT OF APPEALS

CHARLES W. WEBB,	:	
Petitioner-Appellant,	:	Case No. 920436-CA
v.	:	
FRED VAN DER VEUR,	:	Category No. 3
Warden, Central Utah Correctional Facility,	:	
Respondent-Appellee.	:	

BRIEF OF APPELLEE

- - - - -

APPEAL FROM A DISMISSAL OF A PETITION FOR  
WRIT OF HABEAS CORPUS, IN THE SIXTH JUDICIAL  
DISTRICT COURT, IN AND FOR SANPETE COUNTY,  
STATE OF UTAH, THE HONORABLE DAVID L. MOWER,  
PRESIDING.

R. PAUL VAN DAM (3312)  
Attorney General  
DAVID B. THOMPSON (4159)  
Assistant Attorney General  
236 State Capitol  
Salt Lake City, Utah 84114

Attorneys for Appellee

CHARLES W. WEBB  
P.O. Box 550  
Gunnison, Utah 84634

Pro se

F

NOV 20 1992

Mag  
Clerk  
Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

---

CHARLES W. WEBB,	:	
Petitioner-Appellant,	:	Case No. 920436-CA
v.	:	
FRED VAN DER VEUR,	:	Category No. 3
Warden, Central Utah	:	
Correctional Facility,	:	
Respondent-Appellee.	:	

---

BRIEF OF APPELLEE

- - - - -

APPEAL FROM A DISMISSAL OF A PETITION FOR  
WRIT OF HABEAS CORPUS, IN THE SIXTH JUDICIAL  
DISTRICT COURT, IN AND FOR SANPETE COUNTY,  
STATE OF UTAH, THE HONORABLE DAVID L. MOWER,  
PRESIDING.

R. PAUL VAN DAM (3312)  
Attorney General  
DAVID B. THOMPSON (4159)  
Assistant Attorney General  
236 State Capitol  
Salt Lake City, Utah 84114

Attorneys for Appellee

CHARLES W. WEBB  
P.O. Box 550  
Gunnison, Utah 84634

Pro se

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES. . . . .	ii
JURISDICTION AND NATURE OF PROCEEDINGS. . . . .	1
STATEMENT OF ISSUES PRESENTED ON APPEAL AND STANDARDS OF APPELLATE REVIEW . . . . .	1
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES . . . . .	2
STATEMENT OF THE CASE . . . . .	2
STATEMENT OF FACTS. . . . .	2
SUMMARY OF ARGUMENT . . . . .	3
ARGUMENT	
POINT I    PETITIONER MAKES NO EFFORT TO SHOW THAT THE DISTRICT COURT'S DISMISSAL OF HIS PETITION WAS ERRONEOUS; THEREFORE, THE DISMISSAL SHOULD BE SUMMARILY AFFIRMED. . . . .	3
POINT II    PETITIONER'S CLAIM THAT THE SIXTH DISTRICT COURT DID NOT HAVE SUBJECT MATTER JURISDICTION OVER HIS PETITION IS WITHOUT MERIT . . . . .	4
CONCLUSION. . . . .	6

TABLE OF AUTHORITIES

CASES CITED

	Page
<u>Codianna v. Morris</u> , 660 P.2d 1101 (Utah 1983) . . . . .	3
<u>Fernandez v. Cook</u> , 783 P.2d 547 (Utah 1989) . . . . .	2, 3
<u>State v. Christean</u> , 533 P.2d 872 (Utah 1975) . . . . .	5
<u>Wagstaff v. Barnes</u> , 802 P.2d 774 (Utah App. 1990) . . . . .	3

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann. § 78-2a-3 (Supp. 1992) . . . . .	1
Utah Code Ann. § 78-3-4 (Supp. 1992). . . . .	4
Utah R. App. P. 20. . . . .	4, 5
Utah R. Civ. P. 65B . . . . .	4, 5
Utah R. Evid. 201 . . . . .	5

IN THE UTAH COURT OF APPEALS

---

CHARLES W. WEBB,	:	
Petitioner-Appellant,	:	Case No. 920436-CA
v.	:	
FRED VAN DER VEUR,	:	Category No. 3
Warden, Central Utah	:	
Correctional Facility,	:	
Respondent-Appellee.	:	

---

BRIEF OF APPELLEE

- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a dismissal of a petition for a writ of habeas corpus filed under rule 65B(i), Utah Rules of Civil Procedure.

This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2a-3(2)(k) (Supp. 1992), as a case transferred from the supreme court.

STATEMENT OF ISSUES PRESENTED ON APPEAL

AND STANDARDS OF APPELLATE REVIEW

The sole issue presented on appeal is whether the district court correctly dismissed petitioner's habeas petition on the ground that the only nonfrivolous issue could and should have been raised on direct appeal of his conviction.

"In considering an appeal from a dismissal of a petition for a writ of habeas corpus, no deference is accorded the lower court's conclusions of law that underlie the dismissal of the petition. [This Court] review[s] those for correctness."

Fernandez v. Cook, 783 P.2d 547, 549 (Utah 1989).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Any relevant text of constitutional provisions, statutes, or rules pertinent to the resolution of the issues presented on appeal is contained in the body of this brief.

STATEMENT OF THE CASE

Petitioner filed a habeas petition in the Utah Supreme Court, challenging his aggravated robbery conviction (R. 1-7). The supreme court transferred the petition to the Sixth District Court for disposition (R. 13).

The district court dismissed as frivolous all claims in the petition except one and ordered the State<sup>1</sup> to respond to the nonfrivolous claim (R. 23-28). The State moved to dismiss on the ground that the one remaining claim could and should have been raised on direct appeal of petitioner's conviction (R. 29). The district court granted that motion (R. 49-50) (a copy of the court's order is attached as an addendum). This appeal followed (R. 52).

STATEMENT OF FACTS

A statement of facts beyond that set forth above in the Statement of the Case is not necessary to the resolution of the issue presented on appeal.

---

<sup>1</sup> Respondent-appellee will refer to itself as "the State" rather than "the Warden."

### SUMMARY OF ARGUMENT

Petitioner makes no effort to show that the district court erroneously dismissed his habeas petition on the ground that the only nonfrivolous issue could and should have been raised on direct appeal of petitioner's conviction. Therefore, this Court should summarily affirm the dismissal.

Petitioner's additional claim that the Sixth District Court lacked subject matter jurisdiction over his habeas petition is meritless. By statute, all district courts have subject matter jurisdiction over habeas petitions.

Insofar as petitioner argues that the Sixth District Court should not have been the court to consider his petition because it was not the committing court, this "venue" objection is untimely. And in any event, the rules of appellate procedure and civil procedure support the supreme court's referral of petitioner's habeas petition to the Sixth District Court for disposition.

### ARGUMENT

#### POINT I

PETITIONER MAKES NO EFFORT TO SHOW THAT THE DISTRICT COURT'S DISMISSAL OF HIS PETITION WAS ERRONEOUS; THEREFORE, THE DISMISSAL SHOULD BE SUMMARILY AFFIRMED

Petitioner makes no effort to show that the district court erroneously dismissed his habeas petition on the ground that the only nonfrivolous issue could and should have been raised on direct appeal of petitioner's conviction. See Fernandez v. Cook, 783 P.2d 547, 549 (Utah 1989); Codianna v. Morris, 660 P.2d 1101, 1104 (Utah 1983); Wagstaff v. Barnes, 802



P.2d 774, 775 (Utah App. 1990). Rather, he argues the merits of his claims, something the district court never reached.

Accordingly, this Court should summarily affirm the district court's dismissal of the petition.

## POINT II

### **PETITIONER'S CLAIM THAT THE SIXTH DISTRICT COURT DID NOT HAVE SUBJECT MATTER JURISDICTION OVER HIS PETITION IS WITHOUT MERIT**

Petitioner's argument that the Sixth District Court did not have subject matter jurisdiction over his petition is meritless. By statute, all district courts have subject matter jurisdiction over habeas petitions. See Utah Code Ann. § 78-3-4(1) & (2) (Supp. 1992) ("The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law. . . . The district judges may issue all extraordinary writs and other writs necessary to carry into effect their orders, judgments, and decrees.").

Insofar as petitioner argues that the Sixth District Court should not have been the court to consider his petition because it was not "the court in which the commitment leading to confinement was issued," Utah R. Civ. P. 65B(b)(2), his objection is untimely and meritless.

Under rule 20(a), Utah Rules of Appellate Procedure, the supreme court, as it did here, may refer a habeas petition originally filed in that court to "the appropriate district

court."<sup>2</sup> Furthermore, rule 65B(b)(2), which provides for venue changes, clearly contemplates that a court other than the committing court may consider a habeas petition: "The proceeding shall be commenced by filing a petition . . . with the clerk of the court in which the commitment leading to confinement was issued, *except that the court may order a change of venue on motion of a party for the convenience of the parties or witnesses*" (emphasis added). Reading rule 20(a) and rule 65B(b)(2) together, it was not inappropriate or unreasonable for the supreme court to refer petitioner's case to the Sixth District Court, the district in which petitioner is incarcerated.<sup>3</sup>

In any event, petitioner did not make a venue objection in the district court. Therefore, he waived the issue. See State v. Christean, 533 P.2d 872, 874 (Utah 1975).

---

<sup>2</sup> Rule 20(a) provides in pertinent part:

If a petition for a writ of habeas corpus is filed in the appellate court or submitted to a justice or judge thereof, it will be referred to the appropriate district court unless it is shown on the face of the petition to the satisfaction of the appellate court that the district court is unavailable or other exigent circumstances exist.

<sup>3</sup> The Court can take judicial notice that the Central Utah Correctional Facility is located in Gunnison, Utah, which lies within the Sixth Judicial District. Utah R. Evid. 201.

CONCLUSION

Based on the foregoing arguments, this Court should affirm the district court's dismissal of the petition.

RESPECTFULLY submitted this 20<sup>th</sup> day of November, 1992.

R. PAUL VAN DAM  
Attorney General

*David B. Thompson*  
DAVID B. THOMPSON  
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Brief of Appellee were mailed, postage prepaid, to Charles W. Webb, P.O. Box 550, Gunnison, Utah 84634, this 20<sup>th</sup> day of November, 1992.

*David B. Thompson*

## **ADDENDUM**

FILED

DISTRICT COURT, STATE OF UTAH  
SANPETE COUNTY

Address: 160 North Main Street, Manti, UT 84642  
Telephone: (801) 835-2131

JAN 16 1991 9 45 AM  
J. L. CHRISTIANSEN  
CLERK

*[Signature]* DEPUTY

Charles W. Webb,  
Plaintiff

vs.

ORDER ON MOTION TO DISMISS

Fred Van Der Veur  
Respondent

Case number 91-12-10012

Respondent has asked the Court to dismiss the Petition for Writ of Habeas Corpus on file herein. The history of the case is as follows:

When the petition was first filed, the Court issued a ruling finding that most of it was frivolous. However, one of the claims was found to be non-frivolous, and respondent was directed to answer it.

The response came in the form of a Motion to Dismiss, supported by a Memorandum.

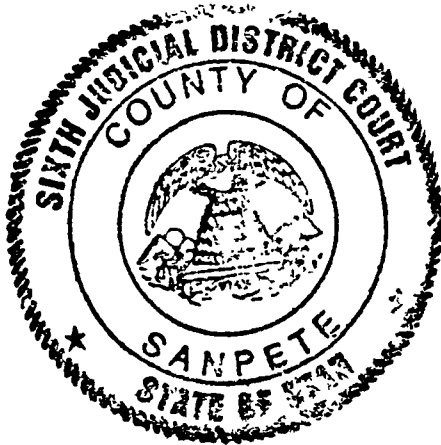
The Motion to dismiss is granted. The claim made by petitioner that the issuance of a Protective Order at trial violated his rights was a matter that could and should have been raised on appeal.

Petitioner must have been present at his trial, otherwise he would not have known about the issuance of the Protective Order.

Petitioner likewise, filed an appeal after his conviction. He failed to raise the issuance of the Protective Order with the Appellate Court.

Petitioner should have raised the issuance of the Protective Order with the Appellate Court. His failure to do so is a bar to claiming any relief on that basis in the Habeas Corpus action. CODIANNA v. MORRIS, 660 P.2d 1101 (Utah 1983).

Dated this 22 day of APRIL, 1992



BY THE COURT

Judge David L. Mower

CERTIFICATE OF SERVICE

I hereby certify that I mailed a full, true and correct copy of the foregoing Motion and Order to Dismiss to Charles W. Webb, and David F. Bryant, Assistant Attorney General on this 22<sup>nd</sup> day of April, 1992.

Deputy Clerk